

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
AMERICAN GREENFUELS ROCKWOOD :
(TENNESSEE), LLC, :
:
Plaintiff, :
:
-v- :
:
AIK CHUAN CONSTRUCTION PTE. LTD., :
:
Defendant. :
:
----- X

21cv7680 (DLC)

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:
AIK CHUAN CONSTRUCTION PTE. LTD., :
:
Counterclaim Plaintiff, :
:
-v- :
:
KOLMAR AMERICAS, INC. and AMERICAN :
GREENFUELS ROCKWOOD (TENNESSEE), LLC, :
:
Counterclaim Defendants. :
:
----- X

MEMORANDUM OPINION
AND ORDER

APPEARANCES:

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DENISE COTE, District Judge:

A bench trial was held in this action between November 13 and November 16, 2023. On November 20, the Court granted judgment to the plaintiff American GreenFuels Rockwood (Tennessee), LLC ("GreenFuels") on its breach of contract claim and to the counterclaim defendants on all counterclaims brought by Aik Chuan Construction Pte. Ltd. ("Aik Chuan"). See American Greenfuels Rockwood (Tennessee), LLC, v. Aik Chuan Construction Pte. Ltd., 21cv7680 (DLC), 2023 WL 8018271 (S.D.N.Y. Nov. 20, 2023). Familiarity with this Opinion is assumed; all capitalized terms have the meanings previously assigned to them.

On November 30, GreenFuels filed its proposed judgment. On that date, Aik Chuan raised a new challenge to GreenFuels' damages calculation. Aik Chuan asserts for the first time that

GreenFuels improperly includes interest on the 70% kicker fee as part of its calculation.¹

Aik Chuan's objection is without merit and has in any event been waived. Trial courts may exercise discretion over "whether an argument has been waived." Brown v. City of New York, 862 F.3d 182, 187 (2d Cir. 2017). Where a party fails to raise an argument at trial, it may properly be deemed waived. Id. at 188.

The calculation of damages is derived from the formula provided in the Loan Agreement. Through the Subordination Agreement, Aik Chuan became responsible for paying that amount. The Loan Agreement included the requirement that the borrower pay a 70% kicker fee, and that the Loan Agreement's interest calculations would be applied to an amount that included that fee.

The plaintiff's executive Kevin Luddy, in the affidavit constituting his direct testimony, gave the plaintiff's then-current calculation of its damages. Before Aik Chuan began its cross-examination of Luddy, the Court acknowledged that Aik Chuan could cross examine Luddy about the plaintiff's calculation of damages. In its brief cross examination on this

¹ The parties do not dispute that the interest is properly applied to the principal amount of the loan.

issue, Aik Chuan did not question the application of interest to the 70% kicker fee.

Following the close of testimony on November 15, 2023, the Court asked counsel whether there were any objections to the plaintiff's calculation of damages. Aik Chuan raised two objections: first, a legal challenge as to whether the Subordination Agreement requires Aik Chuan to pay the interest described in the Loan Agreement, and second, a challenge regarding the accuracy of one of the mathematical calculations. Aik Chuan did not otherwise dispute GreenFuels' damages calculation. It did not question the inclusion of interest on the kicker fee. The Court directed the parties to confer on the mathematical issue, and, on November 16, GreenFuels reported that the mathematical issue had been resolved. The parties' agreement on the mathematics of the calculation required an understanding about both the sums to which the interest rates were applied and the interest rates themselves.

The parties supported their summation arguments with power-point presentations. GreenFuels included a slide setting out the formula for its damage calculation. That slide included interest on the 70% kicker fee. GreenFuels' counsel made explicit reference to the kicker fee in his oral remarks. Aik Chuan made no objection about the kicker fee in its own


summation. It only argued that it was not required to pay either the 12% pre-default or the 25% post-default interest set out in the Loan Agreement. The Court rejected this argument in its November 20 Opinion. American Greenfuels Rockwood (Tennessee), 2023 WL 8018271, at *21.

The amount of damages to which GreenFuels has shown it is entitled is set forth in the Loan Agreement. This includes the 70% kicker fee and interest on that fee. In any event, Aik Chuan failed to raise an objection to this component of the damage calculation at trial, and accordingly that objection has been waived.

Conclusion

Aik Chuan's November 30 objection to a damages calculation that includes the obligation to pay interest on the Loan Agreement's kicker fee is overruled.

Dated: New York, New York
December 4, 2023



DENISE COTE
United States District Judge